



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2010

Ms. Candice M. De La Garza
Ms. Yushan Chang
Assistant City Attorney
City of Houston, Legal Department
P.O. Box 368
Houston, Texas 77001-0368

OR2010-13900

Dear Ms. De La Garza: and Ms. Chang

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 398585.

The Houston Police Department (the "department") received two requests from the same requestor for specified incident reports. You state the department does not have incident reports for some of the case numbers.¹ You also state the department is releasing some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim that incident report numbers 79406210, 81100310, 107001210, and 140227709 are excepted under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the reports at issue are either related to pending criminal investigations or to inactive criminal investigations that are pending additional leads and the statute of limitations has not run on the investigations. Based upon your representations and our review, we conclude that release of incident report numbers 79406210, 81100310, 107001210, and 140227709 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to incident report numbers 79406210, 81100310, 107001210, and 140227709 under section 552.108(a)(1).

Next, you claim that incident report numbers 41714110 and 108824710 are excepted under section 552.108(a)(2), which excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that incident report numbers 41714110 and 108824710 pertain to criminal investigations by the department that have been closed and that did not result in conviction or deferred adjudication. Based on your representations and our review, we find that section 552.108(a)(2) is applicable to incident report numbers 41714110 and 108824710.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which you state has been released, the department may withhold incident report numbers 79406210, 81100310, 107001210, and 140227709 under section 552.108(a)(1) of the Government Code and incident report numbers 41714110 and 108824710 under section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eb

Ref: ID# 398585

Enc. Submitted documents

c: Requestor
(w/o enclosures)